

Partnership Rule Changes

Several changes were made to the partnership tax rules.

First, gain or loss from the sale or exchange of a partnership interest is treated as effectively connected with a U.S. trade or business to the extent that the transferor would have had effectively connected gain or loss had the partnership sold all of its assets at fair market value as of the date of the sale or exchange. Any gain or loss from the hypothetical asset sale by the partnership is allocated to interests in the partnership in the same manner as nonseparately stated income and loss.

Second, the transferee of a partnership interest must withhold 10 percent of the amount realized on the sale or exchange of the partnership interest unless the transferor certifies that the transferor is not a nonresident alien individual or foreign corporation.

Third, TCJA modifies the definition of a substantial built-in loss such that a substantial built-in loss is considered to exist if the transferee of a partnership interest would be allocated a net loss in excess of \$250,000 upon a hypothetical disposition by the partnership of all partnership's assets in a fully taxable transaction for cash equal to the assets' fair market value, immediately after the transfer of the partnership interest.

Fourth, TCJA modifies the basis limitation on partner losses to provide that a partner's distributive share of items that are not deductible in computing the partnership's taxable income, and not properly chargeable to capital account, are allowed only to the extent of the partner's adjusted basis in its partnership interest at the end of the partnership taxable year in which an expenditure occurs. Thus, the basis limitation on partner losses applies to a partner's distributive share of charitable contributions and foreign taxes. Lastly, TCJA repeals the rule providing for technical terminations of partnerships. Under that rule, a partnership's existence did not necessarily end; rather, it resulted in the termination of some tax attributes and the possibly early closing of the tax year.